

OHD Service Corporation and Teamsters Local Union No. 670 affiliated with International Brotherhood of Teamsters, Petitioner. Case 36-RC-5485

February 28, 1994

DECISION AND DIRECTION

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

The National Labor Relations Board has considered determinative challenges in an election held April 20, 1993, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 15 for and 14 against the Petitioner, with 2 challenged ballots, a number sufficient to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, and has adopted the hearing officer's findings and recommendations,¹ as modified by this Decision and Direction.

The sole issue before us is whether Ginger Pagel was eligible to vote in the election. We agree with the hearing officer that, during the period that the Employer operated the swing shift, Pagel, as the floor leader on the inspection belts of that shift, was a supervisor within the meaning of Section 2(11) of the Act. We disagree, however, that because of her status during that period she was not an eligible voter on the critical dates.

The hearing officer found that Pagel worked the first 5 months of the 1992-1993 processing season as a floor leader (supervisor) on the swing shift and the last 3 months as a quality control technician, a unit position. Relying on *Canonie Transportation Co.*, 289 NLRB 299 (1988), she concluded that 5 out of 8 months is a substantial portion of Pagel's working time and that, therefore, Pagel was not an eligible voter. Accordingly, she sustained the challenge to Pagel's ballot.

¹ No exceptions were filed to the hearing officer's recommendation sustaining the challenge to the ballot of Pat McVicker. We adopt that recommendation pro forma.

The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

In its exceptions, the Employer noted that Pagel's supervisory job was generated by an extraordinary occurrence, a record hazelnut harvest that for the first time in the history of the plant required a second shift on the inspection belts. The Employer also noted that the swing shift ended before the petition was filed, and that Pagel was not working as a supervisor at the time the petition was filed or the election was held. It contends, therefore, that she was eligible to vote in the election.

We agree with the Employer that Pagel is an eligible voter in the circumstances here. The record establishes that Pagel worked as a unit employee both before and after her stint as a supervisor, and that her elevation to supervisory status was temporary and limited to the swing shift for the 1992-1993 season. The record fails to show that, in the inspection belt area in which Pagel worked, a swing shift would be required in future seasons. It is undisputed that the creation of the swing shift in the 1992-1993 season was necessitated by unusual and unforeseen circumstances. Thus, Supervisor Pat McVicker, who had worked at the plant for 16 years, testified without contradiction that she had never known the plant to work a swing shift until the 1992-1993 season. These circumstances distinguish this case from *Canonie* where the supervisory relief program was a regular part of the employer's tugboat operation and the individual there who was found ineligible to vote, unlike Pagel, had worked as a relief captain 3 years before, and in the year before the election had moved back and forth between his unit and supervisory positions for substantial periods of time. Consequently, we find that Pagel's supervisory experience did not extinguish her community of interest with other unit employees, because she had not previously acted in a supervisory capacity, and because it does not appear that Pagel will serve in the role of a temporary or part-time supervisor in the foreseeable future.

Accordingly, we overrule the challenge to the ballot cast by Pagel, and we shall issue the following

DIRECTION

IT IS DIRECTED that the Regional Director shall, within 14 days from the date of this Decision and Direction, open and count the ballot of Ginger Pagel and prepare and serve on the parties a revised tally of ballots. Thereafter, the Regional Director shall issue the appropriate certification.